



**TESTIMONY OF EDWARD G. KRAMER, Director & Chief
Counsel of THE HOUSING ADVOCATES, INC**

Before the

**Subcommittee on housing & Community Opportunity of the U.S.
House of Representatives Committee on Financial Services**

June 16, 2008

Cleveland, Ohio

I. Introduction

Good morning. I am Edward G. Kramer, Director & Chief Counsel for The Housing Advocates, Inc.(HAI). I would first like to thank Chairwoman Maxine Waters and the members of the Subcommittee for holding this important hearing on “Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio. I also want to express my appreciation to Congresswoman Stephanie Tubbs Jones and her staff for their efforts in advocating for affordable housing and aiding our efforts over the years to fight the injustices caused by predatory lending. This hearing is coming at a crucial time with the meltdown of the subprime mortgage business and the unprecedented foreclosure rates throughout Ohio and our nation.

A legal system in which only the politically powerful and wealthy can afford legal representation is not only inherently unfair, but justice will be better served if all persons are represented. The Housing Advocates, Inc. (HAI) was organized in June 1975 to offer minorities and the poor an opportunity for housing justice. In the ensuing 33 years the organization has emerged as a full-service public interest law firm, fair housing organization, consumer and housing counseling agency with a multiplicity of projects:

- " providing housing and foreclosure defense to thousands of Greater Clevelanders over the last six years;
- " undertaking a comprehensive fair housing testing program since 1989;
- " operating a Discrimination Complaint Service since 1975 to protect the rights of all persons regardless of race, color, creed, religion, disability, nationality or familial status;
- " providing technical assistance to communities and the housing industry attempting to fulfill their civil rights obligations;
- " undertaking litigation to secure housing justice which has resulted over two million dollar of verdicts and settlements to victims of housing discrimination;
- " recruiting and training attorneys to conduct fair housing litigation;
- " counseling apartment and mobile/manufactured home tenants regarding their rights;
- " operating a legal clinic in conjunction with Cleveland State University through which second and third-year law students defend the rights of minorities and other victims of housing discrimination including not-for-profit housing corporations;

- " preparing studies and operating a speakers bureau on housing subjects
- " targeting the unmet housing needs of Hispanics, immigrants and the disabled in Greater Cleveland.
- " establishing the Mid-Ohio Project last September by opening a new service in Columbus, Ohio to fight housing injustices in the 10 counties of Central Ohio.

The success of the organization can be attributed to both human and financial resources. Contributions from individuals and corporations, coupled with grants from the U.S. Department of Housing & Urban Development, the State of Ohio, City of Cleveland, Cuyahoga County, private and business foundations have enabled HAI to launch many innovative programs. For more information about the organization go to our website www.housingadvocatesinc.com.

More than a decade ago, Councilman Frank Jackson was warning of the dangers posed by the subprime mortgage schemes which were beginning to prey on Cleveland neighborhoods that had been abandoned by many of our traditional lenders. If these warnings had been acted on the damage to our community could have been lessened if not avoided. As Councilman, President of City Council and now Mayor of Cleveland, Frank Jackson has fought to obtain justice for Cleveland residents against the abusive practices of some lenders, brokers, title companies and appraisers who have used predatory practices to make a fast buck. Our organization has always received strong support for our clients from Mayor Jackson and Angel Guzman, his Director of Consumer Affairs. We wish to acknowledge Major Jackson's leadership in this area and thank him for his vision and courage.

My testimony today will address the five questions which you asked for statements on in your letter of June 5th inviting my participation. The Housing Advocates, Inc. and our sister community organizations face strained financial and staff resources in face of the tsunamis of foreclosures and sheriff sales devastating all of our Greater Cleveland communities. I am honored to provide this testimony as an advocate for the other organizations like ESOP, Community Housing Solutions, Inc., Cleveland Housing Network, Spanish American Committee, Neighborhood Services, Inc., the Legal Aid Society of Cleveland, and the many other groups working to prevent homelessness caused by this crisis.

1. Please describe the impact of foreclosures and vacant properties in Cleveland.

Victims of lending abuses lose their home, but the individual tragedy is only part of the impact of these illegal practices. The sizable investment made by federal, state and local governments along with private foundations over the last 20 years to increase

affordable, decent and safe housing in the City and to stabilize its neighborhoods is threatened by these predatory lending practices. This investment of millions of dollars in private and public monies has been lost by the stripping of equity and foreclosures with its vacant and deteriorating structures threatening the viability of Cleveland's neighborhoods.

The costs of Ohio's foreclosure epidemic have been staggering. Foreclosure filings have jumped 395 percent from 1995 to 2006, up 24 percent just between 2005 and 2006. Dayton Daily News , Our View: Treat mortgage lenders like polluters, Wednesday, October 31, 2007. The Congressional Joint Economic Committee estimates that Ohio can expect another 82,000 home foreclosures between now and the end of 2009 — with an economic impact of more than \$3.7 billion, measured in terms of the loss in value of foreclosed homes and neighboring properties, and the decrease in property tax revenues. Id.

Also, recent foreclosure filings reveal that this problem is growing in the suburbs of Cuyahoga County. Cleveland no longer ranks number 1 in foreclosures in the County it is third with Maple Heights and East Cleveland having more per thousand persons. Ohio Policy Matters, Foreclosures in Cuyahoga County (August 2007) Appendix 2 attached as Exhibit 1.

The Chinese adage that a picture is worth a thousand words is a truism. I urge the members of the Subcommittee to take time to visit the neighborhoods in Cleveland to see the vacant dilapidated homes that only a few years ago were part of our affordable housing stock. Let me give you an example of what this means not only to the community, but the impact on individual homeowners.

Gretchen Bowman, one of HAI's staff attorneys, and I represent a 78 year old woman who lives in Cleveland's east side. Our client has lived in this house for 38 years. It is a well maintained home where she raised her children. In 2005, she was approached by a mortgage broker with promises to refinance the home so she could pay off a \$5,000 unsecured high interest Household Finance loan. She did not get what was promised! Instead the broker earned thousands of dollars of fees and our client received \$879.10 from Argent Mortgage LLC. The broker made sure she would have no choice but to sign this new loan. He advised her not to pay the current mortgage so by the time of closing, almost three months after making her loan application, the threat of foreclosure forced her to sign the new loan papers. Unfortunately, the new bank soon declared a default — not for failure of paying her mortgage -- and started a foreclosure action. In 2005, this house was appraised for \$89,000. HAI undertook the defense of this foreclosure and about six weeks ago by agreement of the parties a new appraisal was undertaken. The appraisal came back with a value of \$31,000. A lifetime of mortgage payments and maintaining a home now is worth less than thirty-five per cent of its value three years ago.

- 2. Please describe any programs your organization has undertaken to reduce or prevent foreclosures or to address properties abandoned as a**

result of foreclosures. In what ways have those programs been successful or unsuccessful in preventing foreclosures?

The Housing Advocates, Inc. (HAI) is a truly unique organization in the Greater Cleveland area. It is the only remaining Cleveland area public interest law firm recognized by the Internal Revenue Service. HAI has nine lawyers at the present time. However, the organization is much more than a public interest law center. It provides programming to educate the public, government officials and housing professionals on a wide range of subjects, it develops both reports and brochures on housing issues, has a staff of 18 employees and 13 student interns for counseling and advocacy on foreclosure prevention and promotion of affordable housing opportunities, provides legal representation to victims of predatory lending where necessary and appropriate and is recognized as one of the leaders on housing consumer and predatory lending issues.

EDUCATIONAL OUTREACH EFFORTS

HAI educates homeowners, renters, real estate professionals and attorneys. It produces and provides glossaries, checklist, brochures and other documents and materials. The program has the following accomplishments:

- A. Educating Cleveland and Cuyahoga County Residents.** Perhaps the most important of HAI's educational efforts is the education of the public. Between December of 2001 and May 2008, HAI performed 163 educational outreach programs on predatory lending practices for Cleveland residents through its Home Owner Assistance Program (HOAP). HAI, under a contract with the U.S. Department of Housing & Urban Development, has conducted educational outreach programs for Cuyahoga County residents on predatory lending issues. Several of these trainings were designed for religious leaders to identify potential situations where their members may be victims of predatory lending so they can refer them to HAI. In addition to the educational outreach programs, HAI also educates residents through the following methods:

XPredatory Lending PowerPoint Program. This is an interactive program. A HAI attorney describes the loan process and shows residents what documents they will likely see when they purchase a home or use their home as collateral for a loan (e.g., refinance, home equity loans, etc.) The program also helps residents to understand their basic legal rights and identifies steps residents can take to avoid bad loans. A modified, more detailed version of the program is available for real estate professionals and a more detailed legal version is available for attorneys

XMortgage Glossary. HAI produces and provides mortgage glossaries to residents in basic, easy to understand terms. This is a proactive step that helps to demystify mortgage lending language. The glossary

empowers residents by providing them with knowledge and information. The most recent version of the glossary includes sample documents that a resident might see when signing a mortgage.

XMortgage Checklist. HAI produces and provides a checklist to residents who are considering getting a mortgage-related loans. Residents can take the checklist to their loan arranger, have the arranger complete the form and then return it to HAI for an analysis.

XAnti-Predatory Lending Brochures. HAI produces brochures in both Spanish and English to help residents avoid becoming victims. Brochures are distributed at HOAP's offsite locations, during outreach efforts and are distributed to libraries. Similarly, HAI has produced anti-predatory lending brochures in both Spanish and English

XAssists Other Organizations. HAI and HOAP staff consulted with the City of Shaker Heights to help create that City's predatory lending awareness program. In the past, HAI has worked with the City of Cleveland and local groups to help create its senior predatory lending program.

LENDING ABUSE HOTLINE

HAI currently receives phone calls and referrals regarding alleged abusive lending practices from a variety of areas. The Home Owners Assistance Program (HOAP) is funded by the City of Cleveland through Federal Community Block Grant Development (CDBG) funds. The City has committed *over \$750,000.00* in the last three years to fund this program. HOAP maintains a database of each city resident that contacts the program and falls within certain income guidelines.

HAI receives funds from Cuyahoga County to assist residents in most communities who have been victimized by predatory lending. Records are kept of all contacts that are made, pursuant to this County contract. The referral sources for HAI's clients include: the 2-1-1 Help Line, and Consumer Affairs offices for Municipalities in most of the outlying County suburbs, various non-profit agencies and residents that have contacted HAI.

HOAP has received approximately, 242 calls from January 2003 to May 2008 regarding alleged predatory lending abuses.

PREDATORY LENDING COUNSELING

Through its educational outreach efforts, HAI encourages the public to get their mortgage-related documents from lenders before their closing and then to bring those documents to HAI. This is one of the reasons for the Mortgage Checklist. However, in most cases, residents do not come to HAI until after the documents have been signed.

Therefore, HAI provides pre- and post-loan counseling to residents. Between January 2003 and May 2008, HOAP serviced almost 807 Cleveland households. This number does not include most high income residents and residents who are repeat users of HAI's services. Members of Cleveland City Council, City of Cleveland's Department of Consumer Affairs and Department of Aging, Community Development Corporations throughout the City, other housing organizations, attendees from the various educational outreach programs and former clients all send people seeking assistance to HAI. HAI has serviced over 274 additional households referred by the above entities. The process of assisting residents is as follows:

Intake Initially, a Cleveland Resident contacts HOAP either over the telephone or during a face-to-face meeting at one of HOAP's five offsite locations or at HAI's main office. Either the paralegal or the resident completes the intake form depending on whether information is given over the phone or face-to-face. Shortly after receiving the resident's relevant information, the paralegal will input the information into a database, create a folder and forward the information to one of the attorneys.

Interview, Document Review and Counseling After the attorney receives the resident's information, the counseling process begins. The attorney will interview the resident, listen to the resident's concerns and ask appropriate questions to determine what if any laws may be relevant. The attorney will likely also ask the resident to bring or produce key documents (e.g., mortgage documents, home improvement contracts, etc.). Sometimes it is necessary to request the documents from either the lender or the title agency because the resident does not have copies of the documents or the resident has unsigned copies of the documents. Once the resident produces the documents, those documents will be reviewed to determine if any other laws have been violated. The review and analysis of the documents usually involves a calculation of the costs and fees associated with the loan to determine if the loan violates the "Truth In Lending Act" or the "Home Ownership And Equity Protection Act".

After the attorney has gathered sufficient information, analyzed the documents and assessed the legal merits of the case, the attorney will counsel the resident. If the attorney cannot help the resident with his or her concerns (e.g., the resident needs or desires to file bankruptcy), the attorney will discuss what possible avenues of recourse the resident might have and refer the resident to the appropriate organization or agency. If the attorney believes that resident's case has some merit and believes that HOAP can assist the resident (based on HAI's financial resources and human resources), then the resident will be signed to an investigation, communication and negotiation agreement.

Negotiations The investigation, communication and negotiation agreement specifically states that at this stage of the representation, HAI is not agreeing to file a lawsuit or take any legal actions other than to further investigate their case, communicate with the appropriate party (e.g., lender, home improvement contractor, title company, etc.) and if possible negotiate an amicable settlement with the party. The HAI attorney then normally sends the appropriate parties or their attorneys a letter either seeking to gather additional information for the investigation or to inform the party of the potential

violations of various laws. The parties or their attorneys will normally respond and either deny liability or attempt to resolve the matter. If the party is willing to discuss an amicable settlement, then the negotiation process begins. Depending on the client's/resident's needs and desires, settlements may take many forms. Some residents want their loan modified, others want to be compensated and some residents want their loans modified and to be compensated. If the client wants their loan modified, HAI attorneys will work with the client and the party to ensure that their new loan will be significantly better than their current loan discuss. For example, in one case we were able to assist Labron S. by stopping his foreclosure, getting Labron \$5,000 in cash, reducing his mortgage debt by \$5,000, lowering his interest rate from 11.95% to 7.0% and reducing his mortgage from a 30 year loan to a 15 year loan. In another case, we were able to reduce John T. monthly mortgage payment by \$275.88 per month on a 30 year loan. There are currently 5 cases in which HOAP attorneys are actively negotiating on behalf of residents or are involved in active investigations.

Litigation In some limited cases, where negotiations have failed and the attorneys continue to believe the resident's case has merit, the HAI attorneys will enter into a litigation agreement with the resident. Unfortunately, most plaintiff's (i.e., victim's) attorneys in Northeast Ohio will not take a predatory lending case. Therefore, HAI is an extremely valuable tool in fighting predatory lending in Cleveland.

First, predatory lending cases are complex. Although we encourage other attorneys to take the time to learn the relevant consumer and mortgage-related laws, most victim's attorneys in Northeast Ohio do not have the interest, time, willingness and skills necessary to pursue a predatory lending case. Attempting to read, understand and apply the Truth In Lending Act (i.e., the primary law used in predatory lending cases) is sufficient to scare away most attorneys.

Second, predatory lending cases are notoriously time consuming. It can take an attorney 3 to 4 hours just to review documents and interview victims and this time is spent before the attorney has determined whether a resident has a "predatory loan" or merely entered into an "unwise transaction".

Finally, Predatory lending cases are difficult and not profitable. The victims of predatory loans are mostly poor and unsophisticated. The lenders, brokers and contractors who perpetrate the loans are mostly wealthy and are primarily defended by bigger law firms. The thought of fighting a large law firm is also a factor in some attorneys fear of taking these cases. Also, a victim's attorney might work on a predatory lending case for 1 to 3 years without receiving any compensation for his or her efforts, while the foreclosure attorney receives regular compensation.

HOAP Attorneys are currently litigating on behalf of 15 Cleveland residents. In some cases, these residents tried unsuccessfully to obtain assistance from various other housing organizations and governmental entities in Cleveland. The residents could not afford to retain an attorney. Therefore, they turned to HOAP as their last option. Between January 2003 and May 2008, HOAP attorneys have successfully resolved 19 cases through

litigation. These cases have resulted in consumer savings of \$668,133.37 through reduced principal in the mortgage note, lower interest rates, cash pay outs and reimbursement of costs. For example, HAI's attorneys negotiated down an existing mortgage note with back payments, attorney fees, costs and late fees of \$108,000 to a 6% interest rate for 321 months with the principal reduced to only \$22,500 ---an immediate savings of \$85,500. In another case, HOAP recovered \$23,895 for one resident. In the other case, HOAP recovered \$6,700 in cash for a resident and saved the resident an additional \$15,000 over the life of her loan. This amount to a total of \$21,700 recovered for this resident.

THE HOUSING ADVOCATES, INC. HAI- HELP ELIMINATE LOANS THAT ARE PREDATORY (HELP) MORTGAGE FUND

While counseling and, when necessary, litigation, has saved some Cleveland residents from becoming homeless, HAI needed its own refinancing option. Fannie Mae has partnered with HAI in providing a pilot program to purchase on the secondary market up to Five Million Dollars of conventional loans used to refinance these predatory loans. In order to do so, Fannie Mae was willing to liberalize their underwriting criteria for an acceptable mortgage. However, the pilot program requires substantial work and time to identify potential victims, qualify them, assemble loan documents and get a lender to issue a H.E.L.P. Rescue Mortgage. The pilot program created a multi-lender loan committee with our lending partners: Huntington Bank NA, AmTrust Bank, Dollar Bank, and Fifth-Third Bank to spread the risk since the issuing financial institution is still responsible if the new mortgage is not paid back. The entire program is administered by HAI as a not-for-profit organization.

Staff members working for the HELP program have an extensive list of responsibilities. HELP staff members:

1. Conduct intake and make referrals to callers that do not meet the initial criteria of the HELP program.
2. Conduct document reviews to determine if loans need attorney review, have predatory characteristics, warrant further investigation, and/or could be considered for the HELP program.
3. Provide limited credit counseling to individuals participating in the program. HELP staff members work with clients on filling out budgets and staying on task.
4. Conduct initial appointments to determine if callers are even eligible for the HELP program. We gather information in intake form as well as document form.
5. Negotiate loan modifications with mortgage companies so that callers may be able to avoid facing foreclosure.
6. Prepare loan packages to be reviewed at committee meetings. Committee meetings are held once a month.

7. Work out refinancing using the HAI Community Second program that the City of Cleveland created to provide second mortgages in appropriate cases to make up the difference between the HELP mortgage and the payoff of the original loan.

HELP provides pre- and post-loan counseling to residents. Members of Cleveland City Council, The Department of Consumer Affairs and Department of Aging, other housing organizations and former clients send persons who are seeking help to HELP & HOAP. HELP & HOAP has the following accomplishments:

Households Serviced: From Sept 2005 (program launch) to June 2008, there have been 1452 callers. Out of those 1452 callers, 880 have been from the Cleveland area. On average, the HAI-HELP program receives 50 calls per month. There are currently 58 active HELP files. Since Sept 2005, 29 went to Committee for review. Since Sept 2005 we have closed 17 loans. It is anticipated that in June 2008 there will be 2 more loans closed. This will mean that approximately 19 loans will close by the end of June 2008. It is a program goal that that in a calendar year the HELP program closes 8 loans per year. The program may require individuals to use 2-24 months to complete due to the extensive nature of the program, amount of information requested, types of situations that we encounter, and various other difficulties associated with client's issues. The project is in need of additional funding to support these activities. We have saved over \$1.2 million to consumers through this refinancing program.

THE EMERGENCY MORTGAGE (UTILITY, RENTAL & TAX) ASSISTANCE PROGRAM (EMAP)

Beginning in April 2007, HAI has provided Emergency Mortgage, Rental, Utility and Tax Assistance to help families in Cuyahoga County. The Ohio Department of Development is funding HAI \$470,000 for two years to administer this program. The Emergency Mortgage Assistance Program (EMAP) is a loss mitigation program that will provide an emergency fund to households that are in imminent danger of losing their homes due to foreclosure or predatory lending. Households that are provided emergency mortgage and tax assistance must be at or below 50 percent of area median income (AMI) and must be receiving financial counseling. The maximum length of emergency mortgage assistance is three months, for a maximum of \$2,500. Households provided utility and rent assistance must be at or below 35 percent of AMI at time of entry into the program. The maximum length of emergency utility, tax or rent assistance is also three months, for a maximum of \$1,000. EMAP emergency assistance funds will also provide HAI staff the leverage to negotiate forbearance agreements and/or loan modifications for predatory loan and foreclosure victims in Cuyahoga County. Forbearance Agreements will allow HAI staff to negotiate with the holder of the loan to forbear on foreclosure. Since the inception of the program there has been 201 callers, 17 households assisted (43 persons). Of the 17 households, 9 were provided rental assistance, 5 were provided mortgage assistance and 3 were provided utility assistance. To date HAI has disbursed \$11,183.67 in mortgage assistance, \$9,647.81 in rental/utility assistance.

COUNTY FORECLOSURE PREVENTION PROGRAM

Since February 2006, HAI has been a counseling partner of the Cuyahoga County Foreclosure Prevention Project. In this program, HAI is providing foreclosure defense to borrowers who have accessed the First Call For Help – United Way 2-1-1 Help Line and have not been able to enter into a workout agreement with their lender. United Way’s 2-1-1 First Call For Help is an essential piece of the Foreclosure Prevention Program. Any borrower who has their primary residence in Cuyahoga County, who wants to stay in their home and who has the means to maintain a payment plan for their loan is eligible to receive counseling and advice through the Foreclosure Prevention Program. These borrowers are asked to call 2-1-1 to be referred to the appropriate agency, including the Housing Advocates, Inc. HAI has one attorney that is staffed by the County Foreclosure Prevention Program. On average this attorney counsels six (6) individuals a month in foreclosure defense. For more information on the County Foreclosure Prevention Program please visit <http://www.dontborrowtroublecc.org/partners.htm>.

Since the launch of the program, HAI has received one-hundred and twenty-nine (135) referrals from the 2-1-1 system. Of these referrals, seventy four (74) were from the City of Cleveland and sixty-one (61) were from Cuyahoga County communities. The Foreclosure Prevention Attorney was able to provide legal assistance to fifty-six (56) of these individuals. Due to the current contract with the County, it has been documented that on average the Foreclosure Prevention Attorney is able to provide comprehensive investigation and legal services to three to four (3-4) County residents. Comprehensive legal services include negotiation with lenders, loan workout agreements, loan modifications, and litigation.

3. Please describe the experiences of your organization in working with borrowers to prevent foreclosures.

Housing Advocates, Inc. (HAI) brings thirty-three (33) years of organizational experience in addressing the divergent housing and credit opportunities available in Northeast Ohio. As an organization, we have been actively involved in providing direct services in the form of education & outreach and loan document review to victims and potential victims of predatory lending since 2001. Previously, HAI staff attorneys have been on the “cutting edge” of efforts to combat predatory lending, including giving testimony, conducting seminars, providing direct services to victims, and litigating predatory lending cases such as *Eva v. Midwest National Mortgage Banc*, and *Turner v. Welsh*. Further, practically since its inception HAI has operated a discrimination complaint service (DCS) for local persons to call if they feel they have been the victims of housing discrimination or predatory lending. Since the DCS has been in operation, numerous County residents and potential residents have received free legal assistance in their fight against housing discrimination.

HAI has extensive experience in providing foreclosure prevention services in Cuyahoga County. HAI utilizes a team approach to facilitate full counseling, educational and legal services for those HAI is contracted to serve. This team approach is comprehensive, involving various professionals. Our current Foreclosure Intervention team includes: a Residential Lending Specialist/Loan Manager with 17 years of

experience. HAI has an Intake/Counseling Supervisor and a part-time Assistant to the Residential Lending Specialist/Loan manager with over 21 years in providing foreclosure prevention counseling. There are six full time attorneys with a broad range of experience that engage in Foreclosure Intervention Legal Counseling including: our Director/Chief Counsel, Assistant Director, Senior Staff Attorney, Foreclosure Prevention Attorney, and Two Home Ownership Assistance Attorneys. HAI also has a part time attorney, a paralegal, and a Budget Analysis/Testing Coordinator. Volunteers include law students from the Fair Housing Law Clinic which is taught by HAI attorneys in cooperation with Cleveland-Marshall College of Law.

At HAI, we understand the importance of tapping into the resources inside and outside of our organization to fully solve the problems of those we serve. HAI currently engages in the following types of foreclosure prevention activities:

- a) Predatory Lending & Home Improvement Counseling
 - o through the Home Ownership Assistance Program (HOAP) and Help Eliminate Loans that are Predatory Program (HELP)
- b) Foreclosure Defense & Loss Mitigation Counseling
 - o through HAI Staff Attorneys / HELP Program Manager providing foreclosure defense and loss mitigation counseling
 - o through the County Foreclosure Prevention Program and 2-1-1 referrals
 - o through the Emergency Mortgage Assistance Program (EMAP) and the prevention of mortgage, utility, and tax default
- c) Home Buyer Education & Prepurchase Counseling
 - o through HOAP and HELP – counseling to prospective homebuyers and how to avoid falling risk to a predatory loan
 - o through fair housing law counseling & education
- d) Post-Purchase Counseling
 - o through follow up counseling: until a client has found alternative housing, until default has been corrected, until mortgagee completes foreclosure or the legal situation has been finalized in the court
- e) Home Equity Conversion Mortgage (HECM) Counseling
 - o 2 of HAI's Counselors are HECM certified
- f) Money/Debt Management Counseling
 - o Financial counseling through HOAP, HELP, EMAP, and with all legal clients.
- g) Other Counseling Services Performed by HAI
 - o Legal Counseling Services – direct legal services from staff attorneys

- fair housing law clinic, a joint venture between Cleveland Marshall College of Law, Cleveland State University and HAI
- Technical Assistance Program: special projects developed to assist local governments, members of housing, lending and insurance industries meet their civil rights obligations.
- Discrimination Complaint Service - a telephone discrimination complaint intake service for residents and potential residents of Cuyahoga County
- Continuing Legal Education

HAI also has extensive experience in providing foreclosure prevention through the Home Owner Assistance Program (HOAP). HOAP provides assistance to low and moderate income residents to prevent predatory lending activities and other consumer fraud problems through education, negotiation and litigation. Through HOAP, HAI has assisted hundreds of Cleveland residents in reviewing their loan documents, and providing outreach and education programs. As a result, HAI has a unique understanding of predatory practices by financial institutions, mortgage brokers, appraisers, and home improvement contractors.

Through HOAP, HAI Staff attorneys negotiate on behalf of residents with lenders. In some cases, HOAP also provides litigation services to residents. Unfortunately, most plaintiff's (i.e., victim's) attorneys in Northeast Ohio will not take a predatory lending case. Therefore, HOAP is an extremely valuable program.

First, predatory lending cases are complex. Although we encourage other attorneys to take the time to learn the relevant consumer and mortgage-related laws, most victim's attorneys in northeast Ohio do not have the interest, time, willingness and skills necessary to pursue a predatory lending case. Attempting to read, understand and apply the Truth In Lending Act (i.e., the primary law used in predatory lending cases) is sufficient to scare away most attorneys.

Second, predatory lending cases are notoriously time consuming. It can take an attorney 3 to 4 hours just to review documents and interview victims and this time is spent before the attorney has determined whether a resident has a "predatory loan" or merely entered into an "unwise transaction".

Third, Predatory lending cases are difficult and not profitable. The victims of predatory loans are mostly poor and unsophisticated. The lenders, brokers and contractors who perpetrate the loans are mostly wealthy and are primarily defended by bigger law firms. The thought of fighting a large law firm is also a factor in some attorneys fear of taking these cases. Also, a victim's attorney might work on a predatory lending case for 1 to 3 years without receiving any compensation for his or her efforts. While predatory lenders' attorney's are receive regular compensation.

Finally, as further support for the value of HOAP, open the yellow pages. The yellow pages contain approximately 134 pages of ads for lawyers. I doubt if you could find more than two attorneys who are willing to help predatory lending victims. If you can find one or two attorneys, it is unlikely that they will represent residents for **free**.

4. In your opinion, what obstacles or challenges have prevented your organization from working with borrowers to prevent foreclosures?

Predatory lending practices have contributed greatly to this crisis in the City of Cleveland robbing our citizens of their home's equity, forcing them into bankruptcy, or losing their homes through foreclosure. In many cases, predatory lending is merely a clever form of housing discrimination. Predatory lenders often Asteer@ borrowers into sub-prime loans when the borrowers are actually eligible for conventional rate loans. Upper-income and middle-income African Americans are more likely to receive a sub-prime loan than low-income white homeowners when refinancing.

The term "dual mortgage market" was first coined in the late 1990's by Chicago economists Daniel Immergluck and Marti Wiles. In studying neighborhood lending patterns in Chicago they had observed that conventional lenders served higher-income white areas while subprime lending was concentrated in lower-income and minority communities. Further, they noticed that this discrepancy was too great to be explained by the credit quality of the borrowers. They described the effects of this pattern as a dual mortgage market. Immergluck, Daniel, and Marti Wiles. 1999. *Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development*. Chicago: Woodstock Institute.

As the Joint Center for Housing Studies at Harvard University points out, the adverse consequences of the dual mortgage market include higher borrowing costs for consumers, increased exposure to abusive practices, and increased foreclosures. These adverse consequences, being tied so closely to subprime lending patterns, have a greater adverse effect in minority neighborhoods, where subprime lending patterns are most concentrated. Apgar, William C. and Allegra Calder. December 2005. *The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending*. Published in The Geography of Opportunity: Race and Housing Choice in Metropolitan America. Brookings Institution Press 2005.

Thus, the practice of extending higher cost loans in minority neighborhoods has a disparate impact on minorities living in minority neighborhoods, making it more likely that they will face foreclosure. This trend is not unique to Cleveland and has not gone unnoticed:

Also troubling is the rapid rise of subprime and predatory **lending** and its significant racial and geographic concentration. A report by the United States Treasury and the Department of Housing and Urban Development (HUD) found that black borrowers were five times more likely to take out a subprime home equity loan than white borrowers - a trend that persists at higher income levels. Moreover, a Federal Reserve Board governor noted that as many as half of subprime borrowers have credit scores that would qualify them for a prime loan. Together, these statistics suggest that black borrowers consistently overpay for home finance.

Howell, Benjamin, Exploiting Race and Space: Concentrated Subprime Lending as Housing Discrimination, 94 Cal. L. Rev. 101, 103 (2006).

As a further consequence, the collateral securing the loans contained in subprime mortgage backed securities will be held primarily in minority neighborhoods by minority borrowers. Thus, when secondary market purchasers exercise their right of foreclosure, those foreclosures have fallen most heavily in concentrated racially segregated neighborhoods.

As African-Americans are more likely than whites with similar credit histories to receive so called “high cost loans”, they are consequently more likely than others to have a home refinance result in a foreclosure. (See the Federal Reserve Bank’s 2007 Economic Trends Index *available online at www.clevelandfed.org/Research* and provided with other supporting documentation.) Thus, the practice of purchasing notes securing high-cost loans in minority neighborhoods is not in actuality a race-neutral practice. Credit is available to borrowers of different races on different terms, in contravention of the requirements of Federal and State fair housing laws. Therefore, the high rates of default and foreclosure that result from these transactions are not unforeseen consequences of a race-neutral policy but instead are logical outgrowths of a lending policy that has a disparate impact.

There are now over 10,000 foreclosed homes, many which are vacant just in the City of Cleveland. This was not done by chance, but reflects the lack of traditional lenders for many of our neighborhoods. Our neighborhoods have seen in the last thirty years many bank branches closed and savings and loans lost through the previous deregulation debacle giving the predators a vulnerable population to give out their toxic loans.

In some of Cleveland’s neighborhoods, Census data indicates that nearly 15% of all available homes are vacant. Most of these homes are vacant due to foreclosure and thus are owned by bank REO departments. To illustrate the extent of bank-owned portfolios in Cleveland, I will turn to the example of Wells Fargo Bank, which at the beginning of this year owned nearly 2,000 properties in the City of Cleveland alone. While vacant, many homes will be vandalized and stripped of any valuable or portable materials, including their pipes and roof shingles. These homes often are so abused that they become inhabitable. Thus, many lenders holding large portfolios of empty, foreclosed Cleveland properties are facing a market saturated with housing of exceptionally poor quality.

Into the vacuum of willing buyers have stepped a number of investment companies. They operate by purchasing foreclosed homes in bulk, and then reselling these homes to buyers on a land contract or rent-to-own schedule. As the investment companies are eager to shift liability for building code violations away from themselves, these rent-to-own contracts often specify that the buyer is to rehabilitate and maintain the properties at their own expense. This type of arrangement can be very dangerous indeed to an unsuspecting purchaser. As a purchaser under a rent-to-own contract, they are legally entitled only to the protections due a rental tenant. This is true despite the fact that the purchaser may have made substantial investments in improving the property, or

in the alternative, may have found themselves responsible for remedying code violations and/or paying Housing Court fines. In addition to the financial danger faced by the unsuspecting consumers, there is real physical danger inherent in these transactions as well. In at least one instance, the Housing Advocates has assisted a homeowner who unwittingly purchased a property that had been condemned by the City for numerous safety violations.

Further, the this rent-to-own scheme appears to be occurring predominately in those neighborhoods on Cleveland's east side where census data indicates that many zip codes have more than 75% African-American residents, and where some zip codes are nearly exclusively African-American. In a study conducted by the Housing Advocates, we found that Destiny Ventures, which has sold many properties in Cleveland on a rent-to-own program, is most active in Cleveland's zip codes 44103, 44104, 44108, and 44112. All of these zip codes are anywhere from 79.1% to 95.8% African-American. Nearly all of the properties purchased by Destiny Ventures were purchased from lender REO portfolios. Some of these properties were purchased by Destiny Ventures for as little as \$2,500.

5. What Federal legislative or regulatory reforms are needed to prevent foreclosures in Ohio?

A. We believe that the Federal and Ohio Fair Housing laws can be an important tool in this effort. Our organization brought one of the early fair housing lawsuits against predatory lenders in the case entitled Eva v. Midwest National Mortgage Banc, Inc., 143 F. Supp. 2d 862 (N.D. Ohio 2001). In Eva female borrowers brought an action under Federal and Ohio Fair Housing Acts alleging that lenders engaged in pattern or practice of predatory and sexually discriminatory lending relating to refinancing of homes previously owned by borrowers. The Court found that these allegations stated a claim under both fair housing laws. The Eva case has been used in other federal litigation to support both race and national origin claims. See Exhibit 2 which is an article entitled Fair Housing Law as a Weapon Against Predatory Lending, Cleveland Bar Journal (April 2007)

We are filing administrative charges with the US Department of Housing & Urban Development, the Ohio Civil Rights Commission and the Cleveland Fair Housing Board against predatory lenders and their cohorts mortgage brokers, appraisers, and banks. Attached as Exhibit 3 is a recent probable cause to believe discrimination occurred determination letter against Argent Mortgage LLC by the Ohio Civil Rights Commission on a charge brought by HAI. We are now exploring similar types of charges against entities that purchased such predatory mortgages which allowed these predators to reload with cash to continue their illegal practices. Financial or Wall Street institutions which refuse to monitor their relationship to mortgage brokers have played an important role in creating this situation. These lenders can be subjected to substantial damage awards. Playing an ostrich and hiding their heads in the sand will not insulate them from any

illegal actions of their mortgage brokers, appraisers and real estate agents with whom they deal. If there can be shown a pattern and practice, then they do have control. They have the right to say yes or no. They have a right to monitor and determine whether or not these independent actors are breaking the law. If they knew or should have known, they can be held liable under the Fair Housing Act.

We urge this committee to recommend doubling the Fair Housing Initiatives Program, 42 U.S. C. § 3616 to Fifty Million dollars for FY2009. This is a major source of funding for private fair housing organizations. The additional monies should be targeted for predatory lending litigation and programs. This relatively small federal commitment can have immediate impact as the US Supreme Court has recognized that “[i]t is apparent, as the Solicitor General says, that complaints by private persons are the primary method of obtaining compliance with the [Fair Housing]Act.” Trafficante v. Metropolitan Life Ins. Co., 93 S. Ct. 364, 367 (1972)

B. The costs for the City of Cleveland and other communities in lost property taxes, demolition, boarding up and maintaining vacant buildings will be astronomical in the billions of dollars over the next decade. This does not even include the social costs to communities of increased crime and a generation that will not have their parent’s ability to borrow on their homes for an education or the down payment on the kids first home. We urge the equivalent of a "Superfund" to finance the necessary money to recover from these toxic loans. Just as Congress imposed a tax on some manufacturers and allowed the government to demand reimbursement for businesses that had helped create an environmental hazard so should those responsible for these predatory loans be required to contribute to the clean up of our cities!

C. It is estimated that about 30% of foreclosures in Cuyahoga County are on Rental properties with tenants occupying at the time of a sheriff sale. Under Ohio law foreclosure purchases are not subject to any existing tenancy at the property, even though the tenants are not parties to the foreclosure action in most cases. A tenant’s first notice of the foreclosure (and resulting termination of tenancy) often is – the foreclosure purchaser’s three-day notice to vacate, or – the deputy’s notice of the foreclosure sale. The tenants are then evicted even though they have often been paying their rent without any recourse. Tenants who have paid their rent and complied with their rental agreements are forced to move before their rental agreements expired, often in the middle of a school year, and always with additional expenses (moving costs, security & utility deposits) We support the position taken by Ohio Policy Matters, Cleveland Tenants Organizations and the Legal Aid Society of Cleveland that legislation be enacted to permit the lease to survive the foreclosure, but that it can be terminated after a 90 day notice or at a lesser period if a cash payment is made to the existing tenants. See Exhibit 4 the testimony of Peter Iskin, Attorney with the Legal Aid Society of Cleveland on May 13, 2008 to the Judiciary-Civil Justice Committee, Ohio Senate.

D. We urge the US Congress to renew the \$180 million dollars allocated for the National Foreclosure Mitigation Counseling Program to increase the availability of foreclosure counseling. This money has permitted us to increase our counseling staff both

in Cleveland and soon in Columbus, Ohio. It will be impossible for community groups already strained to maintain their housing counselors without an early renewal of this vital program.

E. We urge that the Community Reinvestment Act of 1977 be strengthened. Unfortunately, many of these predatory lending practices identified in our testimony were often being funded by financial institutions. It was driven, in part, by the need to check off their Community Reinvestment Act obligations by purchasing these subprime CRA loans. The underlying purpose of the CRA has been perverted by the opportunity to make substantial profits through these high cost loans while continuing to close branches in minority and low and moderate income neighborhoods.

F. We urge HUD to promulgate new Fair Lending regulations that would establish an effective enforcement strategy against racial redlining in lending. HUD has ample regulatory authority to promulgate Fair Lending regulations that will establish the enforcement standards that are necessary if the federal ban on racial redlining is to be a reality in the nation's minority neighborhoods, rather than just a congressional promise. The new HUD regulations should firmly establish the effective lending territory concept as a key element of the Fair Lending enforcement strategy. Any serious enforcement strategy to curb racial redlining must have a clear method for defining the geographic scope of a mortgage lender's effective lending territory.

The new HUD regulations should also establish criteria or guidelines for determining whether minority neighborhoods have been improperly excluded from a lender's effective lending territory. For example, these regulations should make it clear that if a major lender makes loans broadly throughout most of a metro area, then the lender is obligated to include most of the metro area's minority neighborhoods within its effective lending territory.

Specifically, the new HUD Fair Lending regulations should accomplish the following:

1. Declare that mortgage lenders may not pursue marketing or lending policies or practices that exclude minority neighborhoods from their effective lending territories or substantially underserve minority neighborhoods;
2. Establish standards for defining a mortgage lender's effective lending territory;
3. Establish standards for determining whether minority neighborhoods have been improperly excluded from a mortgage lender's effective lending territory or substantially underserved;
4. Establish that lending pattern maps showing virtually no lending or very limited lending in minority neighborhoods within the lender's effective lending territory (properly defined for Fair Lending purposes) are important evidence of unlawful exclusion or underserving;

5. Establish that where marketing strategies that target upscale neighborhoods have a clear discriminatory effect with respect to the inclusion of minority neighborhoods within a lender's effective lending territory, these marketing strategies constitute unlawful discrimination;
6. Establish that where restrictive lending criteria have a discriminatory effect on minority neighborhoods, such lending criteria constitute unlawful discrimination, unless the lender can show that the criteria are required by business necessity and that alternative, less discriminatory criteria are not practical.
7. Direct the primary Fair Lending enforcement agencies to review the effective lending territories of mortgage lenders and to take supervisory action where minority neighborhoods have been improperly excluded or underserved;
8. Establish that where minority neighborhoods have been improperly excluded or underserved, the primary Fair Lending enforcement agency shall at a minimum require the lender to develop and implement an affirmative lending program for such neighborhoods;
9. Explicitly recognize the importance of computerized HMDA data as a tool to enforce the prohibition against racial redlining; and
10. Make it an affirmative duty on the lender to uncover these insidious practices by requiring financial institutions to do a test of loan application files financed by them. In this fair lending review, the Truth in Lending and the HUD Good Faith Estimate documents would be examined. By examining the standard types fees associated with a loan transaction, it is possible to determine if such fees may be excessive or unusual. Another strategy would be to examine any loans where credit life insurance was sold to the borrower along with the mortgage. If the financial institution begins to see some inconsistencies from broker to broker, then that would send up a red flag. Such a pattern would result in closer scrutiny of all new loans being submitted by this particular mortgage broker before agreeing to lend money to its customers.

G. We support the City of Cleveland's City Council resolution for a foreclosure moratorium for the purpose of creating a community counseling and mediation opportunity for all homeowners who are at any stage of foreclosure. We believe linking any moratorium on the borrower attending credit and housing counseling will significantly improve their chances of successfully owning the house after resolving the foreclosure action.

H. We urge that Congressman Dennis Kunnich's bill which prohibits mandatory arbitration in all consumer, loan and employment contracts be enacted. If the parties desire to enter into mandatory arbitration, they can do so after the dispute arises.

I. We urge legislation be enacted requiring three business days before a loan closes, the lender must provide the borrower with the information shown below. The information must be provided on a single piece of “red” or “bright yellow” paper and printed in 12 point type.

Your interest rate is _____ Your interest rate will be _____ (fixed or adjustable)

Your annual percentage rate is _____

Excluding taxes and insurance, your maximum monthly payment will be _____

You _____(will / will not) have a balloon payment.

You ____ (will / will not) be charged a penalty if you refinance or pay off the loan early

You _____(will / will not) have three (3) business days to cancel the mortgage after you have signed the mortgage documents

The lender shall not provide any other documents in the referenced color. If the document is not provided or if the terms are changed after the borrower receives the document, then the borrower will have fourteen (14) days to rescind or cancel the loan.

J. If a homeowner makes monthly payments to a loan/mortgage servicer, then all Communications from the servicer must identify the entity which owns the note.

EXHIBIT 1

FORECLOSURES IN CUYAHOGA COUNTY COMMUNITIES

A REPORT FROM
POLICY MATTERS OHIO

ZACH SCHILLER
JOSH MARCIN

AUGUST, 2007

Appendix 2

Foreclosure Filings/1,000 Population, First Half 2007				
City	2006 Population	First Half 2007 Filings	First Half '07 Filings/1,000 Population	First Half 2007 Rate Rank
Bay Village	14,976	34	2.3	29
Beachwood	11,350	19	1.7	40
Bedford	13,320	90	6.8	8
Bedford Heights	10,663	56	5.3	13
Bentleyville	914	0	N/A	56
Berea	18,139	60	3.3	20
Bratenahl	1,293	9	7.0	6
Brecksville	13,106	11	0.8	54
Broadview Heights	17,563	22	1.3	50
Brook Park	19,699	67	3.4	18
Brooklyn	10,692	25	2.3	28
Brooklyn Heights	1,484	4	2.7	26
Chagrin Falls Twp.	139	0	N/A	56
Chagrin Falls Village	3,739	7	1.9	38
Cleveland	444,313	3,532	7.9	3
Cleveland Heights	47,097	275	5.8	11
Cuyahoga Heights	548	0	N/A	56
East Cleveland	25,213	280	11.1	2
Euclid	48,717	290	6.0	9
Fairview Park	16,212	25	1.5	43
Garfield Heights	28,518	218	7.6	4
Gates Mills	2,330	1	0.4	55
Glenwillow	591	1	1.7	39
Highland Heights	8,620	10	1.2	51
Highland Hills	1,413	3	2.1	31

Hunting Valley	704	2	2.8	24
Independence	6,789	6	0.9	52
Lakewood	52,194	149	2.9	22
Linndale	91	0	N/A	56
Lyndhurst	14,195	34	2.4	27
Maple Heights	24,293	288	11.9	1
Mayfield	3,191	6	1.9	37
Mayfield Heights	18,110	27	1.5	46
Middleburg Heights	15,237	20	1.3	49
Moreland Hills	3,142	7	2.2	30
Newburgh Heights	2,197	15	6.8	7
North Olmsted	32,126	64	2.0	34
North Randall	850	5	5.9	10
North Royalton	29,465	45	1.5	44
Oakwood	3,630	19	5.2	14
Olmsted Twp	10,365	21	2.0	33
Olmsted Falls	8,333	39	4.7	15
Orange	3,319	9	2.7	25
Parma	80,009	230	2.9	21
Parma Heights	20,293	43	2.1	32
Pepper Pike	5,738	9	1.6	42
Richmond Heights	10,372	35	3.4	19
Rocky River	19,377	37	1.9	36
Seven Hills	11,915	18	1.5	45
Shaker Heights	27,245	108	4.0	16
Solon	22,257	44	2.0	35
South Euclid	21,791	122	5.6	12
Strongsville	43,347	64	1.5	47
University Heights	13,015	37	2.8	23
Valley View	2,064	3	1.5	48
Walton Hills	2,321	2	0.9	53
Warrensville Heights	13,967	98	7.0	5
Westlake	31,025	49	1.6	41

Woodmere	769	3	3.9	17
Cuyahoga County	1,314,246	6,697	5.1	

Sources: Center on Urban Poverty and Community Development, MSASS, Case Western Reserve University, NEO CANDO system (<http://neocando.case.edu>) analysis of data from Cuyahoga County Common Pleas Court; U.S. District Court, Northern District of Ohio; U.S. Census Bureau, 2006 American Community Survey. As noted on p. 1 of the report, data exclude 686 filings for which the geographic location was not readily available at the time of this report.

EXHIBIT 2

by Marilyn Tobocman and Edward G. Kramer

Marilyn Tobocman is a principal assistant attorney general in the Civil Rights Section. Edward G. Kramer is director and chief counsel of The Housing Advocates, Inc..

The evils of predatory lending have been recognized by the Ohio General Assembly with its passage of SB 185, legislation that responds to some of the abuses by some mortgage brokers, loan officers, appraisers and others taking advantage of vulnerable consumers. This article describes a number of advantages the fair housing laws offer the attorney representing victims of predatory lending practices, making it a logical companion in any enforcement of Ohio's recently enhanced consumer protections.

What Are Predatory Practices and Loans

Predatory loans are a product of the subprime loan market, which is designed to serve consumers ineligible for "A-Credit" loans. In the subprime market, the lenders evaluate the credit-worthiness of a borrower by establishing various risk classifications with associated pricing parameters. There is no standard set of credit risk assessment criteria as exists in the prime market. The subprime market typically takes into consideration a potential borrower's credit history; the household debt-to-income ratio if the loan is approved; and the combined loan-to-value ratio for home equity loan and other mortgage debt on the property. Standards vary, however, within the subprime market, and different lenders may assign different weights for each of these factors. The borrower pays more because subprime loans are usually more costly to the lender to originate, sell and service than traditional "A-credit" loans.

There is a legitimate place for sub prime lending, but not for predatory lending. When the loan exceeds the borrower's needs and repayment capacity it is predatory.¹ The types of practices which, made in a combination, turn a subprime loan into a predatory loan include:

- Loans sold over the phone, door-to-door or by direct mail
- Loans carrying high interest rates (usually higher than 13 percent)
- Imposing excessive "points" or "fees"
- Requiring the borrower to purchase specific credit, life, accident or unemployment insurance as a condition of the loan
- Monthly payments that exceed the borrower's income
- Balloon payments that are unexplained to the borrower
- Successive refinancing that increases the interest rate while reducing the monthly payment ("Flipping")
- Prepayment penalties locking the borrower into unfair terms
- Arranging a subprime loan with high interest rates when the borrower's credit would qualify them for a lower interest prime loan
- Appraisals that inflate the property's value, offer cash to the borrower, but leave the mortgage dissatisfied in any subsequent sale, resulting in both foreclosure and bankruptcy for the borrower ("Equity Stripping")

Predatory Loans that Invoke the Protections of Fair Housing Laws

The fair housing laws apply when the lender exploits the need for refinancing or loans for home purchase of a particular group the laws were intended to protect. Therefore, whenever it can be shown that persons have been targeted for unfair lending practices based on their race, color, religion, sex, familial status, ancestry, disability or national origin, the state² and federal³ fair housing laws provide an additional legal claim for damages. In our very segregated housing market, the most prevalent type of targeting is directed at neighborhoods where the residents are primarily of one national origin or race. Targeting under the fair housing laws is known as "reverse redlining." One of the reasons minorities are vulnerable to reverse redlining is the history of redlining by traditional banks that has led them to believe that they are not welcome or eligible for prime loans.

The Fair Housing Laws can Expand Who has Standing to Bring a Predatory Lending Action

The advantage of a fair housing law claim over consumer protection laws is its history of being liberally construed.

Caucasians have standing to sue when race discrimination deprives African Americans of housing on grounds that the Caucasians are injured by being deprived of the economic, social and educational advantages of interracial association.⁴ Fair housing organizations have standing on grounds that discrimination frustrates their purpose and diverts their resources.⁵ Cities have standing when the conduct perpetuates ghettos or has negative impact on housing values.⁶ The language of the state and federal statutes make this possible by permitting “any person aggrieved” to file a claim.⁷

Both the federal and state statutes provide for investigations by administrative agencies, giving the private practitioner some free discovery.⁸ And injury from a discriminatory act is presumed⁹ without the limits on damages often found in consumer protection statutes.

Fair Housing Laws Stretch the Net of Liability over more Actors

Fair housing laws offer a wider choice of parties to be sued. The state law identifies persons liable to suit as any owner, lessor, assignor, builder, manager, broker, salesman, appraiser, agent, employee, lending institution, the state, all political subdivisions, and state authorities, agencies, boards and commissions.¹⁰ Federal law covers “any person or entity whose business includes engaging in a residential real estate-related transaction.” That phrase includes making or purchasing loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a dwelling that is secured by residential real estate and the selling, brokering or appraising of residential real property.¹¹

The doctrine of respondeat superior is available to impose liability on both principal and agent.¹² One court concluded that the Fair Housing Act’s “overriding societal priority” requires that “the one innocent party with the power to control the acts of the agent, the owner of the property or other responsible superior, must act to compensate the injured party for the harm, and to ensure that similar harm will not occur in the future.”¹³ Similar reasoning permits fair housing claims against the defendant mortgage company’s president and employee survive the motion to dismiss.¹⁴ In this same case, an additional named defendant managed a “Equity Acceleration Program” that paid one extra mortgage payment each year with funds drawn from the mortgagor’s checking account, charging the mortgagor both to sign up for the program and imposing a transaction fee every time payments were made. They argued they were not a mortgage lender, banker, mortgage arranger or creditor. In denying their motion to dismiss, the court noted that the fair housing laws do not apply exclusively to an entity specifically existing for the purpose of engaging in real estate-related transaction. They only need be “included” as one aspect of its overall functioning to come under the statute’s language of “other financial assistance.”

In *Hargraves v. Capital City Mortgage Corp.*,¹⁵ the Fair Housing Act claims survive against the lender who purchased the plaintiffs’ loans even absent any role in establishing the credit terms or originating the loans. In *Echols v. A-USA Mortgage Corp.*, the complaint named everyone connected with the home purchase from the real estate broker, the mortgage broker, the lender, the appraiser, the attorneys who presided over the closing and the loan servicer. The only named defendants dismissed from all claims were the sellers’ agents.¹⁶

Beat the Statute of Limitations Defense with the Fair Housing Law

The state fair housing law’s statute of limitation is one year for initiating the administrative processing and filing a civil action¹⁷ and, for the federal law it is one year for initiation of the administrative process¹⁸ and two years for the filing of a civil action.¹⁹ The continuing violation theory has expanded the time in which claims can be filed. In *Honorable v. The Easy Life Real Estate System, Inc.*,²⁰ the court permitted the last of the several sales alleged in the complaint, which were within the limitations period to allow untimely transactions to remain subject to the lawsuit. The allegation was that each home buyer could not know that the defendants were exploiting the dual housing market based on the sale of one home. Only after the plaintiffs learned that defendants engaged in a pattern of similar sales practices against other African Americans in the Austin community could they know that the defendants had the power to exploit the dual market and discriminate against them on the basis of their race. In *Hargraves v. Capital City Mortgage Corp.*,²¹ the court permitted the fair housing law claims to continue on the theory that as long as the illegal contracts were in operation, imposing exorbitant interest rates and being enforced through collection letters and foreclosure proceedings, the unlawful acts continued to occur under the continuing violation concept.

In *Matthews v. New Century Mortgage Corp.*,²² equitable tolling based on fraudulent concealment permitted four plaintiffs to survive what would otherwise be an untimely filing. They ranged in age from 69 to 72, were all single females living on pensions or social security and were solicited for home improvement loans. They received loans ranging from \$49,000 to \$102,000 on applications describing them as business owners with monthly incomes more than double the actual amounts received in the form of social security or pensions or babysitting. None were given the documents to review before closing or were able to review documents before signing them. They learned the loan terms at the time of foreclosure.²³

Conduct that Invites Consideration of a Fair Housing Claim

For purposes of alleging a fair housing violation in a standard lending context, the plaintiff must show:

- He or she is a member of a protected class
- He or she applied for and was qualified for the loan
- The loan given was on grossly unfavorable terms
- The lender continues to provide loans to other applicants with similar qualifications, but on significantly more favorable terms

*Gonzalez v. Ameriquest Mortgage Co.*²⁴ provides an example of predatory practices visited on a Hispanic, thereby permitting a fair housing claim. The borrower, who spoke Spanish and little or no English, claimed that the brokers actively pursued her to refinance a home loan with the assurance that her monthly payments would increase only marginally. The loan documents, which were in English, disclosed loan payments that exceeded her monthly income. When the borrower closed the loan, she was not provided any closing documents. Her request for copies of all loan documents was met with a demand she pay for them. The complaint alleged that the lender discriminated against her on the basis of race, national origin and gender in violation of the Fair Housing Act based on terms less favorable than those offered to borrowers not better qualified, but of a different race, national origin or gender. These allegations were sufficient to state a claim under the Fair Housing Act and survive a motion to dismiss.

A parallel allegation of discrimination relied on a comparison of conduct of the parent corporation with its subsidiary, a subprime lender. In Chicago, Equicredit, a subsidiary of Bank of America, made loans almost exclusively in minority areas, while the Bank of America made loans in predominantly Caucasian areas. The complaint alleged Equicredit imposed unfair credit terms, including high interest rates, terms not imposed by Bank of America entities.²⁵

There is an alternate analysis that brings a predatory lending claim within the prohibitions of the fair housing laws without requiring less favorable treatment, the hallmark of a discrimination claim. In *Beard v. Worldwide Mortgage Corp.*,²⁶ the allegation that defendants intentionally targeted African Americans and African American neighborhoods with fraudulent loan practices designed to take away their homes stated a fair housing violation. In *Eva v. Midwest National Mortgage Banc, Inc.*,²⁷ the complaint alleged a pattern of predatory and discriminatory lending directed at female borrowers for residential loans by locking them into unaffordable loans that included equity stripping features and allowed defendants to deceive secondary market purchasers. The necessary allegation for purposes of the Fair Housing Act was that the defendants discriminate against women by deliberately targeting them for predatory loans.

When confronting real estate transactions that strip equity from housing, the addition of a Fair Housing Act claim with its history of liberal interpretation may provide a safety net when other consumer claims are lost because their statutes tend to be strictly construed.

1 Hargraves v. Capital City Mortgage Corp., 140 F. Supp. 2d 7 (D.D.C. 2000)

2 Ohio Revised Code Section 4112.02(H)

3 42 U.S.C. 3601 et seq.

4 Trafficante v. Metropolitan Life, 409 U.S. 205 (1972).

5 Havens v. Coleman, 455 U.S. 363 (1982).

6 Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979).

7 Ohio Revised Code Section 4112.051; 42 U.S.C. 3613.

8 Ohio Revised Code Section 4112.05(B); 42 U.S.C. 3610.

9 McDonald v. Verble, 622 F.2d 1227 (6th Cir. 1980); 725 F. 2d 684(6th Cir. 1983).

10 Ohio Revised Code Section 4112.01.

11 42 U.S.C. 3605.

12 General Building Contractors Ass'n v. Pennsylvania, 458 U.S. 375, 392, 73 L.Ed. 2d 835, 102 S. Ct. 3141 (1982).

13 Walker v. Crigler, 976 F.2d 900 (4th Cir. 1992)

- 14** *Eva v. Midwest National Mortgage Banc, Inc.*, 143 F. Supp. 2d 862 (N.D. Ohio 2001)
- 15** 140 F. Supp. 2d 7 (D.D.C. 2000)
- 16** 2001 U.S. Dist. LEXIS 25878 (W.D. Tenn. 2001)
- 17** Ohio Revised Code Section 4112.05(B) and 4112.051.
- 18** 42 U.S.C. 3610.
- 19** 42 U.S.C. 3613.
- 20** 182 F.R.D. 553 (N.D. Ill. 1998)
- 21** 140 F. Supp. 2d 7 (D.D.C. 2000)
- 22** 2002 U.S. Dist. LEXIS 2144 (S.D. Ohio 2002)
- 23** *Jarrett v. Kassell*, 972 F.2d 1415, 1423 (6th Cir. 1992).
- 24** 2004 U.S. Dist. LEXIS 22705(N.D. Ca. 2004)
- 25** *Johnson v. Equicredit Corp. of America*, 2002 U.S. Dist. LEXIS 4817 (N.D. Ill. 2002)
- 26** 354 F. Supp. 2d 789 (W.D. Tenn. 2005)
- 27** 143 F. Supp. 2d 862 (N.D. Ohio 2001)

EXHIBIT 3



March 13, 2008

Housing Advocates, Inc.
3214 Prospect Ave. East
Cleveland, OH 44115

Argent Mortgage Company, LLC
2550 Golf Rd.
Rolling Meadows, IL 60008

**Housing Advocates, Inc. v. Argent Mortgage Company, LLC
(CLE)H4(38066)05212007; 05-07-0938-8**

**OHIO
CIVIL RIGHTS
COMMISSION**

G. Michael Payton
Executive Director

Commissioners
Leonard Hubert
Grace Ramos
Pastor Aaron Wheeler, Sr.
Rashmi Yajnik

**Cleveland
Regional Office**
Frank J. Lausche Building
615 West Superior Ave.
Suite 885
Cleveland, OH 44113
(216) 787-3150 Phone
(888) 278-7101 Toll Free
(216) 787-4121 Fax
www.crc.ohio.gov

The Ohio Civil Rights Commission administers Chapter 4112 of the Ohio Revised Code, which prohibits discrimination in housing. The Commission has completed its investigation of the subject charge, which was filed under the Act. Informal efforts to resolve the case during the investigation were unsuccessful. All jurisdictional requirements for filing a charge have been met.

The Complainant, Housing Advocates, Inc., has filed an affidavit with the Ohio Civil Rights Commission, alleging that Respondent Argent Mortgage Company, LLC, discriminated on the basis of race by engaging in a pattern and practice of extending loans that are likely to result in default and foreclosure in neighborhoods that are majority African-American. Complainant alleges that the making of such loans is a form of reverse redlining by Respondent. Complainant alleges that Respondent misrepresented loan terms, imposed unreasonable and predatory fees for loans, established impossible repayment terms, failed to consider the borrowers' ability to repay the loans and failed to investigate the practices of brokers of Argent loans.

Complainant cites Elizabeth Redrick's loan as an example of such discriminatory action by Respondent. Complainant alleges that Ms. Redrick received a refinanced loan that increased her interest rate and required her to pay over half of her monthly income for the mortgage, which sets up the loan to fail and enter into foreclosure.

Based on the evidence obtained during the investigation, the Commission has determined that probable cause does exist to believe that a discriminatory housing practice based on race has occurred.

The investigation revealed that Respondent began originating loans in 2003. Respondent was a subprime lender with no prime arm or element. Respondent was financed through lines of credits drawn from banks, it sold most of the loans it originated and then the sales of such loans would then be used to pay back the lines of credit, broker fees, employee pay, employee bonuses, etc. This process would repeat each time the lines of credit were restored.

A review of Respondent's screening process for brokers that can sell Respondent's loans show that it only required the brokers to have a license and have the brokers state that they did not have a history of any legal or regulatory problems in connection with mortgage brokering activities. Although Respondent had the brokers agree to abide by a Best Practice guideline, a broker code of conduct, and to follow all applicable laws and regulations, it cannot show how it

monitored the brokers or if it had taken any action against a broker that violated its policies.

Respondent's underwriting guidelines showed that the better an applicant's credit score, debt to income ratio, and documentation of income, the better the rate an applicant can secure. However for those that are deemed to be poor risks, they can still borrow money at high rates of interest. Those loans can be obtained with limited or no documentation to verify income and no money down. Respondent also had loans that had interest-only and adjustable rate mortgage options and loans that allowed borrowers to take cash out of the deal. These factors gave borrowers greater incentives to use loans originated by Respondent.

Given the low thresholds required to secure loans, Respondent was able to originate almost 16,000 loans in the Cleveland-Elyria-Lorain Metropolitan Statistical Area. It kept half of those loans and sold the rest. This pattern was also found in the Dayton and Youngstown Metropolitan Statistical Areas. Respondent filed over 650 foreclosures in Cuyahoga County where it was a named party. Since Respondent did not buy the loans or act as the trustee, it is believed that Respondent appeared on the foreclosure paperwork because it had originated the loan.

Respondent's first originated loans in Cuyahoga County in 2003. 19 foreclosure actions were filed that year. The next year saw a drastic climb in foreclosure actions, from 19 to 309. The rate of failure for loans did not slow down in the other years as compared to the rates from 2003 and 2004. Loans were failing in a very short time period, but Respondent took no action to address the failures of loans until allegedly in 2005. However, no information was provided to substantiate its claims that it implemented automated fraud software.

Respondent's operating structure allowed for it to have an endless level of financing for its loans and its relationships with the brokers allowed for Respondent to plead ignorance as to fraud committed by the brokers. Respondent also can quickly close its doors easily and without any liquid assets at risk if its loans failed in high numbers. Respondent was in operation for four years before it closed.

Complainant cited Ms. Elizabeth Redrick as an aggrieved party who was a victim of Respondent's practices. The investigation looked into the loan obtained from Respondent by Ms. Redrick. Her paperwork and testimony revealed that Respondent's loan met her goal of reducing her monthly payments and she also received some much-needed cash from the loan. The loan was more sustainable than the loan she had previously held and she did make payments until an intervening problem arose. Respondent had sold her loan along with a pool of other loans totaling slightly over \$3.5 billion to Park Place Securities, Inc. Park Place Securities, Inc. in turn securitized the pool, sold it and got it into the hands of a trustee (Wells Fargo Bank, N.A.) and a servicer (HomeEq Servicing Corporation). Ms. Redrick's loan agreement included a provision requiring her to maintain homeowner's insurance. There was an increase in her homeowner's insurance rates at renewal time that Ms. Redrick refused to pay and she also failed to secure replacement insurance. When her insurance lapsed, the servicer purchased insurance for a six month period and added the payments to her monthly mortgage payments. Ms. Redrick refused to pay these higher amounts. This led to the foreclosure action being filed against her. This action in itself does not rise to the level of predatory lending. However, it was noted that the

broker was using incorrect income amounts on Ms. Redrick's loan application, inflating her income levels to help her secure that loan.

The effect of Respondent on African American neighborhoods was looked at to see if indeed Respondent engaged in a pattern and practice of providing predatory loans to African Americans. Data from the Homeowner's Mortgage Disclosure Act and foreclosure actions were reviewed. An analysis by the Housing Research & Advocacy Center was also incorporated into the investigation. The information took a look at the city of Cleveland and the Cuyahoga County in 2005.

The analysis looked at that racial characteristics and the top ten lenders in the areas of home purchase applications, home purchase originations, refinance applications, and refinance originations for Cleveland's 36 statistical planning areas (SPA). The study showed that Respondent had the greatest market share of applications for refinance lending (2,836 applications, 11.98% of the total market share), applications for home purchase (2,925 applications, 18.36% of the total market share), home purchase originations (1,258 originations, 17.63% of market share) and refinance originations (1,165 originations, 16.65% of market share).

Upon an analysis at the statistical planning area level with race being factored in, the data shows that there is a definite difference between Respondent's presence in heavily African-American SPAs in Cleveland and its presence in SPAs with few African-Americans. In all of these SPAs where there is a predominant African American population, Respondent was number one in each category looked at while in contrast, the market share in SPAs with fewer African-Americans was far less.

At the county level, Respondent's presence has a tremendous correlation to the racial composition of an area. In the 10 areas with the highest percentages of African-Americans, Respondent is in the top ten in any one of the four categories tracked (applications for refinance lending, applications for home purchase, home purchase originations and refinance originations) 37 out of 40 possible times (92.5%). In the 10 areas with the lowest percentages of African-Americans, Respondent was in the top ten in any one of the four categories only 5 out of 40 possible times (12.5%). Of those five times, all of them were in the area of applications. Respondent was never in the top ten when it came to originations in the ten least heavily African-American neighborhoods.

Even more striking is when Respondent was looked to see how many times it ranked number one in the same four areas tracked. In the ten areas with the highest percentage of African-Americans, Respondent was No. 1 23 of the 40 possible times (57.5%). In contrast, in the ten areas with the highest concentration of Caucasians, Respondent was never No. 1 in any of the categories (0.00%).

Comparing the total number of purchase applications, purchase originations, refinance applications and refinance originations in the 10 cities and villages that have the heaviest concentration of African-Americans and the 10 cities and villages with the lowest concentration

**Housing Advocates, Inc. v. Argent Mortgage Company, LLC
(CLE)H4(38066)05212007; 05-07-0938-8**

Page: 4

of African-Americans shows that while Respondent is dominant in the areas with the largest concentration of African-Americans, it virtually disappears in the 37 cities and villages that have populations that are less than 10% African-American.

In the foreclosure arena, between 2003 through mid-2007, there were 665 Argent loans that went into foreclosure in Cuyahoga County. Of those loans 463, or almost 70%, were in census tracts that were 50% or more African-American.

As a result of analyzing Argent's activity, the information gathered tends to demonstrate that Argent's practices had a tremendous negative impact on African-American neighborhoods in Cuyahoga County. Therefore, it is determined that it is probable that Argent's activities and practices had a disparate impact on African-American neighborhoods in Cuyahoga County.

DECISION:

Upon investigation, the Ohio Civil Rights Commission has determined that it is **PROBABLE** that Respondent has engaged in practices unlawful under Section 4112, Ohio Revised Code, and hereby orders the matter be **SCHEDULED FOR CONCILIATION (J1)**.

NOTICE OF RIGHT TO REQUEST RECONSIDERATION:

Pursuant to Ohio Administrative Code 4112-3-04, you have the right to request reconsideration of this determination of the Commission. Such application must be in writing and state specifically the grounds upon which it is based.

This request must be sent to the Compliance Department, Ohio Civil Rights Commission, 30 East Broad Street, 5th Floor, Columbus, Ohio 43215-3428. You must submit this request for reconsideration, along with all additional evidence or supporting documentation you wish to provide in support of your request for reconsideration, within TEN (10) days of the date of mailing of this notice. Any application for reconsideration or additional materials received by the Compliance Department in the Commission's Columbus Central Office after the ten-day period has expired will be deemed untimely filed.

The Commission's Rules do not permit any employee of the Commission to grant any extension to this ten-day filing period.

FOR THE COMMISSION

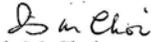

Iris M. Choi
CLEVELAND REGIONAL DIRECTOR

EXHIBIT 4

Judiciary-Civil Justice Committee, Ohio Senate
Hearing on Sub. H.B. 138, LSC 127 0111-7 (SJCv-2) – May 13, 2008
Testimony of Peter M. Iskin, Esq.

The Foreclosure Crisis for Tenants: the Problem and the Remedy

- **Scope of Problem:** About 30% of foreclosures are on tenant-occupied properties
- **Foreclosure Sales Terminate Existing Tenancies:**
 - Foreclosure purchases are not subject to any existing tenancy at the property, even though the tenants are not parties to the foreclosure action in most cases
 - All other purchasers of real property in Ohio buy the property subject to any existing tenancy at the property
- **No Prior Notice to Tenants:** a tenant's first notice of the foreclosure (and resulting termination of tenancy) often is
 - the foreclosure purchaser's three-day notice to vacate, or
 - the deputy's notice of the foreclosure sale
- **Banks (Foreclosure Purchasers) Evict All Tenants Immediately:** The banks (as foreclosure purchasers) rarely permit tenants to remain in the property, but instead
 - Evict tenants in the foreclosure action, when permitted, or
 - Evict tenants with a three-day notice in an eviction action
- **These Evictions Harm Good Tenants and the Neighborhoods**
 - Tenants who have paid their rent and complied with their rental agreements are forced to move before their rental agreements expired, often in the middle of a school year, and always with additional expenses (moving costs, security & utility deposits)
 - Without adequate advance notice, these tenants often are required to double-up with family or friends, or stay in a shelter, until they can find a rental unit and secure the funds needed to relocate (moving costs again, plus security & utility deposits)
 - Cleveland Tenants Organization recently surveyed 50 tenants who were required to move due to a foreclosure: average moving costs, \$1,500; 25 forced to move in with family or friends, or stay in a shelter
 - As a result of these evictions, neighborhoods are left with vacant properties that often are vandalized and breeding grounds for other crimes
- **Remedy: Permit the Tenancy to Survive the Foreclosure Sale, but Permit the New Owner to Terminate the Tenancy with a 90-Day Notice**
 - Permitting the tenancy to survive the foreclosure sale treats a foreclosure purchaser like every other purchaser of real property (*i.e.*, the purchase is subject to any existing tenancy at the property)
 - The 90-day notice provision would provide tenants with reasonable time to relocate before an eviction action can be filed against the family
 - The 90-day notice provision would insure that, during the 90-day period, the owner is obligated to maintain the property
 - The 90-day notice provision would protect the foreclosure purchaser against any undue burden relative to the future use of the property